

To the Forty-fifth Legislature of the State of Texas:

After serious consideration of House Bill 67, received by me on April 23, 1937, I regret I am unwilling to approve it. While I am definitely of the opinion that there is probably a public demand and need for legislation that will clearly define the right and authority to merchants and shippers to transport their property in good faith over the public highways of this State, yet I cannot approve the present bill because it goes farther than this. It goes beyond the purposes for which it was originally intended; it goes beyond remedying the conditions with which it originally sought to deal; this largely by virtue of certain amendments to the bill. My reasons for this veto are as follows:

1.

Section B—(2) reads:

“Provided, owever, that a bona fide employee, agent or consignee of a single principal, who owns his own motor vehicle, or motor vehicles, and who is legally and exclusively engaged in the distribution of the products of said single principal, from an established place of business, shall be entitled to a Private Commercial Carrier permit under the provisions of this Act by complying with the other provisions of this Act.”

This section unquestionably creates a new class of contract carrier. It is so broad in its terms that it will practically permit large concerns to put back on all highways of this State, unregulated and unrestricted, thousands of trucks. In my judgment, it affords the opportunity and the result may follow for the hectic conditions which prompted the passage of the motor carrier laws.

For instance, under this Bill it would be possible for a large oil field tank concern, or a large oil field equipment concern, to employ innumerable agents who could transport these tanks or equipment over any highways without any of the regulations imposed by Chapter 277, Acts of the Regular Session of the Forty-second Legislature. It would be possible for a cotton concern with headquarters on the coast to buy cotton in north and west Texas, transport it without being subjected to regulations in the same fashion and to the same extent formerly experienced in this State. This would be extremely hazardous to life and property and destructive of our highways.

The basis upon which the original motor carrier act was sustained in the United States Supreme Court was that in the exercise of police power, to protect its highways from wear and tear, and to protect the public from loss of life and property, the State had a right to so regulate carriers for

hire. This Bill would set up and create another class of carrier not subject to the regulations imposed upon common carriers under the motor carrier act.

This would present a most serious legal question. In my judgment it might result in striking down the motor carrier act it seeks to amend. This for the reason that the courts will not tolerate the exemption from prosecution on burdens imposed under a law or one class without a reasonable basis therefor. While I desire to achieve the ends originally intended by the Legislature, and to bring some measure of assurance to merchants and others whom the Legislature originally intended to help, I am not willing to impair the validity of our motor carrier law by subscribing to this loosely drawn legislation. I much prefer that it be worked out by a better bill on the subject at this, or some later, session of the Legislature.

Under this section the "consignee" of a single principal is entitled to a Private Commercial Carrier permit. This right to be extended to a consignee is not limited to the character of consignment contract to which the privilege is likewise extended under Section B—(1) of the Bill.

That section reads:

"Provided further that possession of property under a bona fide consignment contract shall for the purpose of this Act be deemed ownership, if such consignment is incidental to the regular established business of the consignee."

As pointed out, the privilege extended in Section B—(2) is to a consignee of a single principal without any restrictions; and I fear that under this provision it will be possible for a contract carrier now subject to the regulations imposed under Chapter 277 to simply slightly change his mode of business and carry on upon a large scale the same business without being subjected to these restrictions.

2.

It will be noted that this "bona fide consignment contract" section does not require that to constitute ownership the consignment should be for the purpose of resale of consigned goods in the due and regular order of business. Without this limitation it will be possible for our highways to be plagued with peddlers of every kind and character and description. This I do not believe either the people or the business men of Texas want.

3.

Section B, paragraph 5, exempts in the operation of the Act "any person transporting milk or cream from the farm where produced to a creamery or cheese factory in any such motor vehicle owned by any such person." It will be noted that this does not restrict the right of transporting milk or cream to the owner of such milk or cream. It would be possible under this provision for a contract carrier to engage in the business of transporting milk and cream from the farm in his own motor vehicle without owning or buying, or selling, such commodities.

4.

Section C, paragraph 2, reads:

"The filing of an application as herein provided, and payment of the fee herein stipulated, shall, as of right, entitle the applicant to a per-

mit, and it shall thereupon be the duty of the Commission, without further requirement, to grant a permit to the applicant."

I think that the Railroad Commission of Texas should be given some discretionary authority in regard to the issuance of "Private Commercial Carrier" permits. By this I mean they should not be required to issue a permit simply because certain verified statements are made, but should issue same when in the Commission's opinion the facts set out are true and the application shows upon its face that the applicant is entitled to such "Private Commercial Carrier" permit.

5.

I am advised by the Department of Public Safety that this Bill under the provisions of Section E (1) would deprive the Driver's License Division of approximately two-thirds ($2/3$) of the revenue now accruing to it, leaving an insufficient amount to properly carry on the work of this Division as required by law, and making it absolutely impossible for the Department to pay the five (5¢) cents fee to the tax collectors of the various counties for the issuance of licenses in the year 1939, for which purpose approximately \$150,000 will be required.

Section 3, paragraph "c" of the Driver's License law (S. B. No. 15, Chapter 466, page 1785, Second Called Session of the Forty-fourth Legislature) provides in brief that "drivers of commercial motor vehicles operating under the jurisdiction of the Railroad Commission of Texas who are required to have a driver's license issued by that Department shall not be required to secure a chauffeur's or operator's license under the terms of this Act for the operation of such vehicle." House Bill No. 67, Section E (1) stipulates that "each driver of a motor vehicle operating under any permit granted under the terms of this Act shall have a driver's license which shall be issued by the (Railroad) Commission." This Bill provides that this Railroad Commission chauffeur's fee shall be \$1.00, whereas the Driver's License Division is now collecting a \$3.00 fee from such persons.

It appears very plainly that chauffeurs employed under a "Private Commercial Carrier" permit under the provisions of H. B. No. 67 would thus be relieved from the payment of the chauffeur's license fee now collected by the Driver's License Division from such persons.

In this connection, I would point out that the annual income of the Driver's License Division amounts to approximately \$235,000.00, and is derived almost entirely from chauffeur's license receipts. I am informed that H. B. No. 67 would withdraw approximately two-thirds ($2/3$) of the present revenue from the Division, leaving an annual income of approximately only \$80,000.00. I would advise you further that the Appropriations Bill now before the Senate appropriates to the Driver's License Division from the Operator's and Chauffeur's License Fund \$250,368.00 for the fiscal year ending August 31, 1938, and \$382,868.00 for the fiscal year ending August 31, 1939. I am informed that the House Appropriations Committee will include substantially the same figures in its Appropriations Bill.

Should the present Legislature finally pass the Driver's License law amendments which are now on the Senate calendar, having passed the House, the Driver's License Division would be absolutely unable to enforce the amended law with such a curtailment in revenue as would result

from the enactment of H. B. No. 67. Indeed, the present work of the Division would be practically nullified.

There are, according to figures furnished by the Highway Department, approximately 184,000 commercial motor vehicle licenses which have been issued to date for 1937. I am informed that but approximately 4,000 of these are now operating under the jurisdiction of the Railroad Commission. The difference between the two figures represents approximately 160,000 trucks, of which, it seems reasonable to assume, that one-half ($1/2$) or 90,000 will come under the provisions of H. B. No. 67, being trucks that operate outside of city limits between two or more incorporated towns using the State highways.

Under the provisions of the Bill, the operators of these trucks would pay to the Railroad Commission \$2.00 per truck for separate and additional license plates, and a \$1.00 chauffeur's license fee for each truck making a total of \$3.00 per truck, and a grand total of \$270,000.

In addition, the Bill provides that each concern qualifying as a "Private Commercial Carrier" shall pay to the Commission a "filing fee" of \$5.00. Assuming that these 90,000 trucks will average two trucks to the owner, we would have 45,000 owners paying a filing fee of \$5.00 each, or a total of \$225,000, and a grand total of \$495,000 revenue to the Railroad Commission under this Act.

Section "i," H. B. No. 67 appropriates this entire sum to the "Motor Carrier Fund" of the Railroad Commission for the purpose of carrying out the provisions of the Act. I am unwilling to thus cripple the Driver's License Bureau of the Public Safety Department at whose hands we expect so much in the matter of safety during the next two years.

For all of the foregoing reasons, I am respectfully disapproving and vetoing H. B. No. 67, and returning same to the House of Representatives, in which it originated.

Respectfully submitted

JAMES V. ALLRED

Governor of Texas